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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/008,781	11/13/2001	David Hathaway	7037-438	5711
7590 09/27/2005			EXAMINER	
Thomas Q. Henry			WOO, JULIAN W	
Woodard, Emhardt, Naughton, Moriarty and McNett				
Bank One Center/Tower			ART UNIT	PAPER NUMBER
111 Monument Circle, Suite 3700 Indianapolis, IN 46204-5137			3731	
			DATE MAILED: 09/27/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

		$\boldsymbol{\mathcal{E}}$				
	Application No.	Applicant(s)				
	10/008,781	HATHAWAY ET AL.				
Office Action Summary	Examiner	Art Unit				
	Julian W. Woo	3731				
The MAILING DATE of this communication app Period for Reply	pears on the cover sheet with the c	correspondence address				
A SHORTENED STATUTORY PERIOD FOR REPL WHICHEVER IS LONGER, FROM THE MAILING D  - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication.  - If NO period for reply is specified above, the maximum statutory period or  - Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tir will apply and will expire SIX (6) MONTHS from a, cause the application to become ABANDONE	N. nely filed the mailing date of this communication. ED (35 U.S.C. § 133).				
Status						
1) Responsive to communication(s) filed on 25 J	<u>uly 2005</u> .					
2a)⊠ This action is <b>FINAL</b> . 2b)☐ This	This action is <b>FINAL</b> . 2b) This action is non-final.					
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is						
closed in accordance with the practice under E	Ex parte Quayle, 1935 C.D. 11, 4	53 O.G. 213.				
Disposition of Claims						
4)⊠ Claim(s) <u>37-41 and 43-52</u> is/are pending in the application.						
4a) Of the above claim(s) is/are withdrawn from consideration.						
5)⊠ Claim(s) <u>37-41</u> is/are allowed.						
6) Claim(s) 43-50 and 52 is/are rejected.						
7)⊠ Claim(s) <u>51</u> is/are objected to.						
8) Claim(s) are subject to restriction and/o	r election requirement.					
Application Papers						
9) The specification is objected to by the Examine	er.					
10) The drawing(s) filed on is/are: a) acc	epted or b) objected to by the	Examiner.				
Applicant may not request that any objection to the	drawing(s) be held in abeyance. Se	e 37 CFR 1.85(a).				
Replacement drawing sheet(s) including the correct	tion is required if the drawing(s) is ob	jected to. See 37 CFR 1.121(d).				
11) The oath or declaration is objected to by the Ex	kaminer. Note the attached Office	Action or form PTO-152.				
Priority under 35 U.S.C. § 119						
12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of:	priority under 35 U.S.C. § 119(a	)-(d) or (f).				
1. ☐ Certified copies of the priority document	s have been received.					
2. Certified copies of the priority document		ion No.				
3. ☐ Copies of the certified copies of the prio						
application from the International Burea	u (PCT Rule 17.2(a)).	•				
* See the attached detailed Office action for a list	of the certified copies not receive	∍d.				
Attachment(s)						
1) Notice of References Cited (PTO-892)	4) Interview Summary					
2)	Paper No(s)/Mail D 5) Notice of Informal F	ate Patent Application (PTO-152)				
Paper No(s)/Mail Date <u>7/25/05</u> .	6) Other:	,				

### **DETAILED ACTION**

## Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 2. Claims 43-50 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Buelna et al. (5,700,273). Lee discloses, in figure 12, an apparatus with a tubular body (30), an advanceable, hollow needle (225 or 227) with a lumen that is configured to carry a suture (and needle 90 or 92), a suture chamber (proximal portion of 30), a suture (72) attached to the needle (when needles 90 and 92 are retracted into hollow needle 225 or 227, a suture retrieval assembly (needles 90 and 92), and an openable hemostastis seal (118).

#### Allowable Subject Matter

- 3. Claims 37-41 are allowed.
- 4. Claim 51 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
- 5. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record, alone or in combination, discloses an apparatus for suturing a tissue membrane with, inter alia, a tubular body, a needle, and an

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openable hemostasis seal member, where the needle has an eyelet and a length of suture through the eyelet.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

## Response to Amendment

6. The rejection under 35 U.S.C. 112, second paragraph, of claim 50 has been overcome.

Applicant's arguments with respect to the rejections based on the reference of Buelna et al. have been considered but are not persuasive. The arguments are directed to the intended use of the invention ("to carry at least a portion of a length of suture through the tissue membrane as the needle is advanced distally"), which does not differentiate the claimed apparatus from the apparatus of Buelna et al., which satisfies the claimed structural limitations. Moreover, the apparatus of Buelna et al.—i.e. the hollow needle—is fully capable of advancing distally through a tissue membrane.

#### Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Julian W. Woo whose telephone number is (571) 272-

4707. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern

Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

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supervisor, Anh Tuan Nguyen can be reached on (571) 272-4963. The fax phone

number for the organization where this application or proceeding is assigned is (571)

273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Julian W. Woo

**Primary Examiner** 

September 21, 2005

Julian W. Woo